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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANDREW AFABLE,) Case No. 2:23-cv-01780 MFO (RAOx)
Plaintiff,)
	) FIRST AMENDED COMPLAINT
)
vs.	) 1. Violation of California Consumer
	) Credit Reporting Agencies Act
	) 2. Violation of the Fair Credit
CARVANA LLC; BRIDGESTECREST	) Reporting Act
CREDIT COMPANY.; EXPERIAN	) 3. Violation of California's Identity
INFOMRATION SOLUTIONS, INC.;	) Theft Statute
EQUIFAX INFORMATION	) 4. Violation of the Rosenthal Fair
SERVICES, LLC.; TRANS UNION	) Debt Collection Practices Act
LLC; and DOES 1-10, inclusive,	) 5. Negligence
)
Defendants.	) JURY DEMANDED

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendants’ violations of California Civil Code § 1785.25(a) (hereinafter “CA CCRAA”) and the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FCRA”), which regulate the collection, dissemination, and use of consumer information, including consumer credit information, and for violations of California’s Identity Theft Statute, Cal. Civ. C. § 1798.92 *et seq.*, and Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), Cal. Civ. C. § 1788, *et seq.*

II. PARTIES

2. Plaintiff, ANDREW AFABLE (“Plaintiff”), is a natural person residing in Los Angeles County in the state of California. Plaintiff is a “debtor” as defined by Cal. Civ. Code § 1788.2(h), a “consumer” as defined by 15 U.S.C. § 1681a, and a “victim of identity theft” as defined by Cal. Civ. C. § 1798.92(d).

3. At all relevant times herein, Defendant, CARVANA LLC (“CARVANA”), was a company engaged in the online selling of used vehicles.

4. At all relevant times herein, CARVANA was engaged in practices or acts in connection with the collection of consumer debts.

5. At all relevant times herein, CARVANA was a “claimant” who has or purports to have a claim for money in connection with a transaction procured through identity theft under Cal. Civ. C. § 1798.92(a).

6. At all relevant times herein, Defendant, BRIDGECREST CREDIT COMPANY (“BRIDGECREST”), was a company engaged, by use of the mails and telephone, in the business of collecting a debt from Plaintiff which qualifies as a “consumer debt,” as defined by Cal. Civ. Code § 1788.2(f).

7. At all relevant times herein, BRIDGECREST was an “information furnisher” as the term is used in the CA CCRAA and FCRA.

8. At all relevant times herein, BRIDGECREST was a “claimant” who has or purports to have a claim for money in connection with a transaction procured through identity theft under Cal. Civ. C. § 1798.92(a).

9. Defendant, EXPERIAN INFORMATION SOLUTIONS, INC. (“EXPERIAN”), is a “person” as that term is defined by 15 U.S.C. § 1681a(b).

10. EXPERIAN is a person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of preparing or furnishing consumer reports, and is

1 therefore a “consumer reporting agency” as the term is defined by the FCRA, 15
2 U.S.C. § 1681a(f).

3 11. Defendant, EQUIFAX INFORMATION SERVICES, LLC.
4 (“EQUIFAX”), is a “person” as that term is defined by 15 U.S.C. § 1681a(b).

5 12. EQUIFAX is a person who, for monetary fees, dues, or on a
6 cooperative nonprofit basis, regularly engages in whole or in part in the practice of
7 assembling or evaluating consumer credit information or other information on
8 consumers for the purpose of preparing or furnishing consumer reports, and is
9 therefore a “consumer reporting agency” as the term is defined by the FCRA, 15
10 U.S.C. § 1681a(f).

11 13. Defendant, TRANS UNION LLC (“TRANS UNION”), is a “person”
12 as that term is defined by 15 U.S.C. §1681a(b).

13 14. TRANS UNION is a person who, for monetary fees, dues, or on a
14 cooperative nonprofit basis, regularly engages in whole or in part in the practice of
15 assembling or evaluating consumer credit information or other information on
16 consumers for the purpose of preparing or furnishing consumer reports, and is
17 therefore a “consumer reporting agency” as the term is defined by the FCRA, 15
18 U.S.C. § 1681a(f).

19 15. The above named Defendants, and their subsidiaries and agents, are
20 collectively referred to as “Defendants.” The true names and capacities of the
21 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
22 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
23 names. Each of the Defendants designated herein as a DOE is legally responsible
24 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
25 Complaint to reflect the true names and capacities of the DOE Defendants when
26 such identities become known.

27 16. Plaintiff is informed and believes that at all relevant times, each and
28 every Defendant was acting as an agent and/or employee of each of the other
Defendants and was acting within the course and scope of said agency and/or

1 employment with the full knowledge and consent of each of the other Defendants.
2 Plaintiff is informed and believes that each of the acts and/or omissions complained
3 of herein was made known to, and ratified by, each of the other Defendants.

4 **III. FACTUAL ALLEGATIONS**

5 17. At various and multiple times prior to the filing of the instant
6 complaint, including within the one year preceding the filing of this complaint,
7 BRIDGECREST contacted Plaintiff in an attempt to collect an alleged outstanding
8 debt.

9 18. During or about February of 2022, Plaintiff discovered that he had
10 been the victim of identity theft.

11 19. Specifically, Plaintiff learned that someone unknown to him had used
12 his identity to finance the purchase of an automobile from CARVANA.

13 20. Plaintiff further learned that CARVANA had allowed the identity
14 thief to take possession of the vehicle and had contacted BRIDGECREST to
15 finance the entire cost of the automobile, \$40,354.00.

16 21. On information and belief, CARVANA profited from its facilitation
17 of this fraudulent transaction.

18 22. CARVANA's conduct in facilitating a fraudulent loan in the amount
19 of \$40,354.00, which subsequently appeared on Plaintiff's credit report, constitutes
20 an act or business practice in connection with the collection of a consumer debt.

21 23. On or about February 13, 2022, BRIDGECREST furnished
22 information regarding the fraudulent vehicle loan to EXPERIAN, EQUIFAX and
23 TRANS UNION, who then reported it on Plaintiff's consumer credit report.

24 24. On or about March 10, 2022, Plaintiff filed and obtained a copy of a
25 police report relating to the theft of his identity.

26 25. Plaintiff immediately provided copies of the police report, with a
27 written explanation of his dispute of the fraudulent debt, to BRIDGECREST and
28 CARVANA.

1 26. Plaintiff also promptly disputed the information appearing on his
2 credit report with EXPERIAN, EQUIFAX, and TRANS UNION.

3 27. On or about March 14, 2022, Plaintiff received a “Notice of Stored
4 Vehicle and Vehicle Billing Information” regarding the vehicle purchased in his
5 name, which stated that the vehicle had been towed and was being stored by Black
6 & White Towing, Inc. The letter was signed by Ritter Lien Sales, Inc. The letter
7 denoted Plaintiff as the registered owner (“R/O”) and CARVANA as the legal
8 owner/lienholder (“L/O”).

9 28. On April 4, 2022, BRIDGECREST responded to Plaintiff’s dispute
10 letter by stating in writing that they had completed their investigation and
11 concluded that the account was valid. BRIDGECREST further wrote that Plaintiff
12 was responsible for the loan.

13 29. Accordingly, BRIDGECREST failed to diligently investigate
14 Plaintiff’s notification of a possible identity theft and continued to pursue the debt
15 that had fraudulently been charged against Plaintiff in violation of Cal. Civ. C. §
16 1798.93.

17 30. Plaintiff continued to follow up with BRIDGECREST over the
18 ensuing weeks and provided a deluge of documentation supporting his claim of
19 identity theft.

20 31. In response to Plaintiff’s persistent correspondence, on or about April
21 19, 2022, BRIDGECREST finally found that account was fraudfully originated and
22 notified Plaintiff that it had submitted updates to the credit reporting agencies
23 including EXPERIAN, EQUIFAX and TRANS UNION.

24 32. Within a year prior to the filing of this Complaint, Defendant
25 BRIDGECREST sent Plaintiff a collection letter seeking to collect on the
26 fraudulent charges on Plaintiff’s account.

27 33. Additionally, Defendant BRIDGECREST continued to report
28 derogatory information on Plaintiff’s credit report after it should have known such
information was false.

1 34. Such reporting or furnishing of consumer information is derogatory as
2 well as false, misleading, or incomplete.

3 35. Such reporting or furnishing had a negative effect on Plaintiff's credit
4 score.

5 36. BRIDGECREST was aware at all times that the third parties to which
6 they are providing this information will disseminate this information to various
7 other persons or parties who will be reviewing this information for the purpose of
8 extending credit, insurance or employment and that they have already done so.

9 37. As a direct result of Defendants' conduct, Plaintiff's credit score
10 decreased.

11 38. The inaccurate information negatively reflects upon Plaintiff,
12 Plaintiff's credit repayment history, Plaintiff's credit to debt ratio, Plaintiff's
13 financial responsibility as a debtor, and Plaintiff's credit worthiness.

14 39. The credit reports have been and continue to be disseminated to
15 various persons and credit grantors, both known and unknown.

16 40. Plaintiff has been damaged, and continues to be damaged, in the
17 following ways:

- 18 a. Emotional distress and mental anguish associated with having
19 incorrect derogatory personal information transmitted about
20 Plaintiff to other people both known and unknown; and
21 b. Decreased credit score which may result in inability to obtain credit
22 on future attempts.
23 c. Out of pocket expenses associated with disputing the information;

24 41. At all times pertinent hereto, Defendants were acting by and through
25 their agents, servants and/or employees who were acting within the course and
26 scope of their agency or employment, and under the direct supervision and control
27 of Defendants herein.

28 42. At all times pertinent hereto, the conduct of Defendants, as well as that
of its agents, servants and/or employees, was malicious, intentional, willful,

1 reckless, and in grossly negligent disregard for federal and state laws and the rights
2 of Plaintiff herein.

3 43. Defendants' conduct was a direct and proximate cause, as well as a
4 substantial factor, in causing the injuries, damages and harm to Plaintiff that are
5 outlined more fully above, and as a result, Defendants are liable to compensate
6 Plaintiff for the full amount of statutory, actual and punitive damages, along with
7 attorneys' fees and costs, as well as such other relief permitted by law.

8 44. Within two years prior to the filing of the Complaint, Plaintiff
9 submitted a dispute to each of the credit reporting agencies pertaining to erroneous
10 reporting. EQUIFAX, EXPERIAN, and TRANS UNION then failed to conduct a
11 reasonable reinvestigation and correct the disputed information within thirty days
12 of Plaintiff's dispute of that information.

13 45. EQUIFAX, EXPERIAN and TRANS UNION did not remove the
14 disputed information off Plaintiff's credit report until over thirty days after
15 Plaintiff's written disputes.

16 46. BRIDGECREST violated sections 1681n and 1681o of the FCRA by
17 engaging in the following conduct that violates 15 U.S.C. §1681s-2(b):

- 18 a. Willfully and negligently continuing to furnish and disseminate
19 inaccurate and derogatory credit, account and other information
20 concerning the Plaintiff to credit reporting agencies and other
21 entities despite knowing that said information was inaccurate; and,
22 b. Willfully and negligently failing to comply with the requirements
23 imposed on furnishers of information pursuant to 15 U.S.C.
24 §1681s-2.

25 47. As a result of the above violations of the CA CCRAA and FCRA,
26 Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal
27 humiliation, embarrassment, mental anguish and emotional distress, and
28

1 Defendants are liable to Plaintiff for Plaintiff's actual damages, statutory damages,
2 and costs and attorney's fees.

3 **COUNT I: VIOLATION OF THE CALIFORNIA CONSUMER CREDIT**
4 **REPORTING AGENCIES ACT**

5 **(As to Defendant BRIDGESTER Only)**

6 48. Plaintiff incorporates by reference all of the preceding paragraphs as
7 if fully set forth herein.

8 49. Cal. Civ. Code § 1785.25(a) states that a "person shall not furnish
9 information on a specific transaction or experience to any consumer credit
10 reporting agency if the person knows or should know the information is incomplete
11 or inaccurate."

12 50. BRIDGESTER negligently and willfully furnished information to
13 the credit reporting agencies it knew or should have known was inaccurate.

14 51. Based on these violations of Cal. Civ. C. § 1785.25(a), Plaintiff is
15 entitled to the remedies afforded by Civil Code § 1785.31, including actual
16 damages, attorney's fees, pain and suffering, injunctive relief, and punitive
17 damages in an amount not less than \$100 nor more than \$5,000, for each violation
18 as the Court deems proper.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff respectfully requests that judgment be entered
21 against Defendant BRIDGESTER for the following:

- 22 A. Actual damages;
- 23 B. Statutory damages;
- 24 C. Costs and reasonable attorney's fees; and
- 25 D. For such other and further relief as the Court may deem
just and proper.

26 **COUNT II: VIOLATION OF THE FAIR CREDIT REPORTING ACT**
27 **(As to Defendants EQUIFAX, EXPERIAN, and TRANS UNION Only)**
28

52. Plaintiff incorporates by reference all of the preceding paragraphs as if fully set forth herein.

53. To the extent that EQUIFAX, EXPERIAN, and TRANS UNION's actions, counted above, violated the FCRA, those actions were done knowingly and willfully.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendants EQUIFAX, EXPERIAN, and TRANS UNION for the following:

- A. Actual damages;
- B. Statutory damages for willful and negligent violations;
- C. Costs and reasonable attorney's fees; and
- D. For such other and further relief as the Court may deem just and proper.

COUNT III: VIOLATION OF THE CALIFORNIA IDENTITY THEFT STATUTE

(Against CARVANA and BRIDGECREST Only)

54. Plaintiff incorporates by reference all of the preceding paragraphs as if fully set forth herein.

55. Plaintiff is a "Victim of Identity Theft" as that term is defined by Cal. Civ. Code § 1798.82(d).

56. CARVANA and BRIDGECREST are each a "claimant" as that term is defined by Cal. Civ. Code § 1798.92(a).

57. The foregoing acts and omissions constitute numerous and multiple violations of the Cal. Civ. Code § 1798.92.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendants CARVANA and BRIDGECREST for the following:

- A. Actual damages;
- B. Punitive damages;
- C. Statutory damages in an amount up to \$30,000;

- D. Costs and reasonable attorney's fees; and
- E. For such other and further relief as the Court may deem just and proper.

COUNT IV: VIOLATION OF THE
ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT
(Against CARVANA and BRIDGESTONE Only)

58. Plaintiff incorporates by reference all of the preceding paragraphs as if fully set forth herein.

59. The RFDCPA, Cal. Civ. C. § 1788.17, mandates that every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code statutory regulations contained within the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692d and § 1692d(5).

60. CARVANA and BRIDGESTONE both engaged in acts and practices in connection with the collection of a consumer debt by contributing to the approval, creation, and establishment of an automobile loan in Plaintiff's name.

61. The conduct of CARVANA and BRIDGESTONE as alleged herein violated the RFDCPA in the following ways:

- a. Using false, deceptive, and/or misleading representations or means in connection with the collection of the alleged debt (15 U.S.C. § 1692e);
- b. Falsely representing the character, amount, and/or legal status of the alleged debt (15 U.S.C. § 1692e(2)(A)); and
- c. Collecting an amount where such amount was not permitted by law (15 U.S.C. § 1692f(1)).

62. To the extent that the actions of CARVANA and BRIDGECREST, alleged herein, violated the RFDCPA, those actions were done knowingly and willfully.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendants CARVANA and BRIDGECREST for the following:

- A. Actual damages;
- B. Statutory damages pursuant to Cal. Civ. C. 1788.62(a)(2);
- C. Costs and reasonable attorney's fees; and
- D. For such other and further relief as the Court may deem just and proper.

COUNT V: NEGLIGENCE

(Against CARVANA Only)

63. Plaintiff incorporates by reference all of the preceding paragraphs as if fully set forth herein.

64. CARVANA owed a duty of care to Plaintiff to refrain from making inquiries into his credit without his permission and to refrain from disseminating Plaintiff's personal information to auto lenders without his permission.

65. CARVANA knew or should have known that the third party attempting to purchase the automobile has stolen Plaintiff's identity because the personal information they provided on the application was incomplete or incorrect, as demonstrated by the supporting documentation Plaintiff subsequently provided to CARVANA.

66. CARVANA breached its duty of care by failing to realize that the information provided by the third party to had stolen Plaintiff's identity was incomplete or incorrect.

67. CARVANA acted with wanton disregard for Plaintiff's credit. CARVANA knew or should have known that there was a risk of potential

1 purchasers applying for credit using stolen identities, and CARVANA knew or
 2 should have known that it did not have adequate systems or practices in place to
 3 prevent the inquiry into, and dissemination of, the credit information of victims of
 4 identity theft.

5 68. As a direct and proximate result of CARVANA's wrongful and
 6 negligent breach of its duty of care to Plaintiff, Plaintiff has been injured.

7 69. The injury and harm suffered by Plaintiff was the reasonably
 8 foreseeable result of CARVANA's breach of its duty of care. CARVANA knew or
 9 should have known that it was failing to satisfy its duty of care and that its breach
 10 would cause Plaintiff to experience the foreseeable harms associated with
 11 impermissible hard inquiries into his credit, and having fraudulent loans taken out
 12 in his name.

13 70. As a direct and proximate result of CARVANA's negligent conduct,
 14 Plaintiff has suffered injury and is entitled to damages in an amount to be proven
 15 at trial.

16 PRAYER FOR RELIEF

17 WHEREFORE, Plaintiff respectfully prays that judgment be entered against
 18 Defendants CARVANA for the following:

- 19 A. Actual damages; and
- 20 B. For such other and further relief as the Court may deem
 21 just and proper.

22 **PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY**

23 Respectfully submitted this 29th Day of March, 2023.

24
 25
 26 By: 

27 Todd M. Friedman, Esq.
 28 Law Offices of Todd M. Friedman, P.C.
 Attorney for Plaintiff

PROOF OF SERVICE

I am employed in Los Angeles, California. I am over the age of 18 and not a party to this action. My business address is 21031 Ventura Blvd., #340, Woodland Hills, CA 91364.

On March 29, 2023, I served true copies of the foregoing document, described as:

FIRST AMENDED COMPLAINT

On the following parties:

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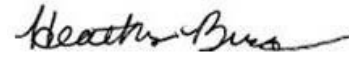
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1 [X] **BY EMAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
2 agreement between parties to accept e-mail or electronic transmission, I caused the
3 document(s) to be sent from email address hburns@toddflaw.com to the persons at the e-mail
4 addresses listed in the Service List. I did not receive, within a reasonable time after the
5 transmission, any electronic message or other indication that the transmission was
6 unsuccessful.

7 [X] **BY ELECTRONIC CASE FILING:** I filed the submitted document listed above via
8 the court's Electronic Case Filing (ECF) system which provides electronic mail (email)
9 service of the listed document directly to the party listed above to his/her "email address of
10 record."

11 [X] **STATE:** I declare under penalty of perjury under the laws of the state of California that
12 the above is true and correct.

13 Executed this March 29, 2023, at Murrieta, California.

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Heather Burns